IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CR No.5420 of 2007

Date of decision: 15.11.2007.

M/s.Mukesh Kumar Rajesh Kumar

C/o Ganesh Flour Mills,Ludhiana and others ... Petitioners

Versus

Ashok Kumar ... Respondent

Present: Mr. Swarn Sandhir, Advocate, for the petitioners.

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PERMOD KOHLI, J. (Oral):

This revision is directed against the order dated 29.09.2007 passed by the learned Civil Judge (Senior Division), Ludhiana, rejecting the application of the petitioner-defendants for leave to serve the interrogatories and a direction has been issued to the petitioner-defendants to file the written statement.

The respondent-plaintiff filed a suit for possession and recovery against the petitioner-defendants wherein the defendants were served through summons and were required to file the written statement. Instead of filing the written statement, an application came to be made under order 11 Rule 1 and 4 of the Code of Civil Procedure seeking leave

of the Court to serve the interrogatories upon the plaintiff for his answer allegedly to enable the petitioner-defendants to file their effective written statement.

The prayer of the petitioner-defendants was seriously opposed by the plaintiff on various grounds.

The learned trial Court vide the impugned order has rejected the application, primarily, on the ground that the defendant in the case is yet to file the written statement and instead of filing the written statement, he has made this application which can be considered only after the written statement is filed and consequently, directed the petitioner-defendants to file the written statement.

I have heard the learned counsel for the petitioners at length.

Order 11 Rule 1 of the Code of Civil Procedure deals with the discovery by interrogatories, which reads as under:-

> "1. Discovery by interrogatories:- In any suit the plaintiff or defendant by leave of the Court may deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties, and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such persons is required to answer:
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> Provided that no party shall deliver more than one

set of interrogatories to the same party without an order for that purpose:

Provided also that interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness."

Under this provision, in any suit, any of the parties i.e. the plaintiff or the defendant may with the leave of the Court deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties. Proviso I to the rule prohibits serving of more than one set of interrogatories to the same party without an order of the Court in this respect. The Second Proviso to Rule 1 of Order 11 of the Code of Civil Procedure speaks of relevancy of interrogatories to the matters in question. Both these provisios regulate the right contemplated by Rule 1 of Order 11 of CPC. Under 2nd proviso, the interrogatories which do not relate to any matters in question shall be deemed irrelevant. Therefore, what is significant is the relevancy of the proposed interrogatories to the questions or the matters in issue. It's natural corollary is that at the time of grant of leave to serve interrogatories, at least, the Court should be in a position to know the matter in question or controversy between the litigating parties. It is only thereafter the Court is able to decide the question of relevancy of the interrogatories sought to be served. The question which falls for consideration is as to when the Court can

determine what is the matter in question. At this stage, there is only plaint, i.e. pleadings of the plaintiff and defendant is yet to file his written statement. It is not known whether the defendants have any intention to admit all or any of the claims/allegations, or going to deny the same. The Court is not in a position to ascertain the matters in question or controversy between the parties. It can only be ascertained after the written statement is filed. The relevancy of the interrogatories, thus, is determinable when the pleadings of both the parties are before the Court and the Court is in a position to find out the respective stands of the parties and consequently the matters in question or controversy between the parties. In the case of Raj Narain Vs. Smt.Indira Nehru Gandhi and another, AIR 1972, Supreme Court 1302, it has been held as under:-

> "27. Questions that may be relevant during cross-examination are not necessarily relevant as interrogatories. The only question that are relevant as interrogatories are those relating to "any matters in question". The interrogatories served must have reasonably close connection with "matters in question". Viewed thus, interrogatories 1 to 18 as well as 31 must be held to be irrelevant."

In M/s. Delhi Vansapati Syndicate Vs. K.C. Chawala, AIR 1983, J & K, 65, it has been held as under:-

> "It is true that a party is not entitled to require its adversary to answer interrogatories, the effect whereof would be to enable it to know that facts, which exclusively constitute the evidence of his opponent's case. But, it is equally true that it can administer interrogatories to its opponent, to obtain admissions from him to everything that on the pleadings of the parties is material for the decision of the case, with the object of facilitating the proof of its own case, as also saving the costs which it may otherwise have to incur on adducing evidence to prove the necessary facts."

At this stage, the petitioner-defendants cannot ask the plaintiff to disclose material or evidence to prepare his defence. He has first to prepare his defence and thereafter the Court is in a position to determine the matters in issue and any of the parties is entitled to serve interrogatories and even elicit admissions of any fact in issue. The object and purpose of the service of interrogatories is to save the time of the Court and enable the Court to effectively decide the controversy involved. Thus, it is necessary that pleadings of both the parties should be before the Court to ascertain the matter in question and examine the relevancy of proposed interrogatories. This seems to be the legislative intent from the conjoint reading of Rule 1

of Order 11 and Proviso second thereto.

I have considered the impugned order. The trial Court has not denied the right to serve interrogatories as desired by the petitioner-defendants, but has only deferred the same to be considered at a later time after the written statement is filed. I do not find that the order of the trial Court suffers from any illegality or irregularity. No interference is warranted. The present revision petition is dismissed with no order as to costs. The petitioner-defendants are directed to file their written statement before or on 17.12.2007

November 15 , 2007 (PERMOD KOHLI)
BLS JUDGE

Note: Whether to be referred to the Reporter: YES